

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMBAC ASSURANCE CORPORATION and
THE SEGREGATED ACCOUNT OF AMBAC
ASSURANCE CORPORATION,

Plaintiffs,

12-cv-7937 (MGC)

-against-

CAPITAL ONE, N.A., as successor by merger
to CHEVY CHASE, F.S.B.,

Defendant.

ANSWER OF CAPITAL ONE, N.A.

Capital One, N.A., as Successor by Merger to Chevy Chase Bank, F.S.B. (“Capital One”), by its undersigned counsel hereby answers each of the numbered paragraphs of Plaintiffs’ Complaint and asserts its affirmative and other defenses thereto. Except as otherwise expressly set forth below, Capital One denies each and every allegation contained in the Complaint, including without limitation, the headings and subheadings contained in the Complaint, and specifically denies liability to Plaintiffs, or that Plaintiffs have suffered any legally cognizable loss for which Capital One is responsible.

Subject to the foregoing, Capital One otherwise answers the Complaint as follows:

1. Capital One denies the allegations of Paragraph 1, except that Capital One admits that Ambac issued insurance policies with respect to the Transactions as defined in the Complaint.
2. Capital One denies the allegations of Paragraph 2.
3. Capital One denies the allegations of Paragraph 3, except that Capital One admits that the applicable contracts between the parties contained warranties. Capital One states that

the applicable contracts speak for themselves and it denies the allegations of Paragraph 3 to the extent that they are inconsistent with those contracts.

4. Capital One denies the allegations of Paragraph 4, except that Capital One admits that the applicable contracts between the parties contained warranties. Capital One states that the applicable contracts speak for themselves and it denies the allegations of Paragraph 4 to the extent that they are inconsistent with those contracts.

5. Capital One denies the allegations of Paragraph 5.

6. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6, and thus denies those allegations.

7. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first four sentences of Paragraph 7, and thus denies those allegations. Capital One denies the remaining allegations of Paragraph 7, except that Capital One admits that it received repurchase demands from the trustee.

8. Capital One denies the allegations of Paragraph 8.

9. Capital One denies the allegations of Paragraph 9.

10. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and thus denies those allegations.

11. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and thus denies those allegations.

12. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and thus denies those allegations.

13. Capital One admits the allegations of Paragraph 13.

14. Capital One admits the allegations of Paragraph 14.

15. Capital One admits that it is subject to jurisdiction in this Court. Capital One states that the applicable contracts speak for themselves and Capital One denies the allegations of Paragraph 15 to the extent that they are inconsistent with those contracts.

16. Capital One denies the allegations of Paragraph 16.

17. Capital One denies the allegations of Paragraph 17.

18. Capital One denies the allegations of Paragraph 18.

19. Capital One admits the allegations of Paragraph 19.

20. Capital One states that the applicable contracts speak for themselves and Capital One denies the allegations of Paragraph 20 to the extent that they are inconsistent with those contracts.

21. Capital One states that the Mortgage Loan Purchase Agreement (“MLPA”) speaks for itself and denies the allegations of Paragraph 21 to the extent that they are inconsistent with the MLPA.

22. Capital One states that the Pooling and Servicing Agreement (“PSA”) and Private Placement Memorandum (“PPM”) speak for themselves and denies the allegations of Paragraph 22 to the extent that they are inconsistent with the PSA and PPM.

23. Capital One states that the I&I Agreement speaks for itself and denies the allegations of Paragraph 23 to the extent that they are inconsistent with the I&I Agreement.

24. Capital One states that the I&I Agreement speaks for itself and denies the allegations of Paragraph 24 to the extent that they are inconsistent with the I&I Agreement.

25. Capital One denies the allegations of the first sentence of Paragraph 25, except that Capital One admits that Ambac issues financial-guaranty insurance policies. Capital One

states that those insurance policies speaks for themselves and denies the allegations of Paragraph 25 to the extent that they are inconsistent with those insurance policies.

26. Capital One states that the transaction documents speaks for themselves and denies the allegations of Paragraph 26 to the extent that they are inconsistent with the transaction documents.

27. Capital One denies the allegations of Paragraph 27, except that Capital One admits that (a) it originated or acquired the loans; (b) at one time it serviced the loans; (c) Ambac provided insurance in connection with certain securities for which the loans served as collateral; and (d) each party assumed certain risks.

28. Capital One states that the risks assumed by the parties are specified in the transaction documents, which speak for themselves. Capital One denies the allegations of Paragraph 28 to the extent that they are inconsistent with the transaction documents.

29. Capital One denies the allegations of Paragraph 29.

30. Capital One denies the allegations of Paragraph 30.

31. Capital One states that the transaction documents speaks for themselves and denies the allegations of Paragraph 31 to the extent that they are inconsistent with the transaction documents.

32. Capital One denies the allegations of Paragraph 32.

33. Capital One states that the PSA speaks for itself and denies the allegations of Paragraph 33 to the extent that they are inconsistent with the PSA. Capital One admits that it received repurchase demands from the trustee. Capital One denies the remaining allegations of Paragraph 33.

34. Capital One states that its letters in response to repurchase demands speak for themselves and denies the allegations of Paragraph 34 to the extent that they are inconsistent with those letters. Capital One denies the remaining allegations of Paragraph 34.

35. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 35 to the extent that they are inconsistent with the I&I. Capital One denies the remaining allegations of Paragraph 35.

36. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 36 to the extent that they are inconsistent with the I&I. Capital One denies the remaining allegations of Paragraph 36.

37. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 37 to the extent that they are inconsistent with the I&I. Capital One denies the remaining allegations of Paragraph 37.

38. Capital One states that the I&I and the PPM speak for themselves and denies the allegations of Paragraph 38 to the extent that they are inconsistent with the I&I and the PPM. Capital One denies the remaining allegations of Paragraph 38.

39. Capital One denies the allegations of Paragraph 39.

40. Capital One states that the transaction documents speak for themselves and denies the allegations of Paragraph 40 to the extent that they are inconsistent with the transaction documents. Capital One denies the remaining allegations of Paragraph 40.

41. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 41 to the extent that they are inconsistent with the I&I.

42. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 42 to the extent that they are inconsistent with the I&I. Capital One denies the remaining allegations of Paragraph 42.

43. Capital One denies the allegations of Paragraph 43.

44. Capital One denies the allegations of Paragraph 44.

45. Capital One denies the allegations of Paragraph 45.

46. Capital One denies the allegations of Paragraph 46.

47. Capital One denies the allegations of Paragraph 47.

48. Capital One states that the repurchase correspondence between Ambac, the trustee and Capital One speaks for itself and denies the allegations of Paragraph 48 to the extent that they are inconsistent with that correspondence. Capital One denies the remaining allegations of Paragraph 48.

49. Capital One denies the allegations of Paragraph 49.

50. Capital One denies the allegations of Paragraph 50.

51. Capital One denies the allegations of Paragraph 51.

52. Capital One denies the allegations of Paragraph 52.

53. Capital One states that the repurchase correspondence between Ambac, the trustee and Capital One speaks for itself and denies the allegations of Paragraph 53 to the extent that they are inconsistent with that correspondence. Capital One denies the remaining allegations of Paragraph 53.

54. Capital One denies the allegations of Paragraph 54.

55. Capital One states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55.

56. Capital One denies the allegations of Paragraph 56.
57. Capital One denies the allegations of Paragraph 57.
58. Capital One denies the allegations of Paragraph 58.
59. Capital One incorporates Paragraphs 1 through 58 of this Answer.
60. Capital One admits the allegations of Paragraph 60.
61. Capital One denies the allegations of Paragraph 61.
62. Capital One admits the allegations of Paragraph 62.
63. Capital One denies the allegations of Paragraph 63.
64. Capital One denies the allegations of Paragraph 64.
65. Capital One incorporates Paragraphs 1 through 64 of this Answer.
66. Capital One denies the allegations of Paragraph 66.
67. Capital One denies the allegations of Paragraph 67.
68. Capital One incorporates Paragraphs 1 through 67 of this Answer.
69. Capital One denies the allegations of Paragraph 69.
70. Capital One denies the allegations of Paragraph 70.
71. Capital One denies the allegations of Paragraph 71.
72. Capital One denies the allegations of Paragraph 72.
73. Capital One incorporates Paragraphs 1 through 72 of this Answer.
74. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 74 to the extent that they are inconsistent with the I&I.
75. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 75 to the extent that they are inconsistent with the I&I.
76. Capital One denies the allegations of Paragraph 76.

77. Capital One denies the allegations of Paragraph 77.

78. Capital One incorporates Paragraphs 1 through 77 of this Answer.

79. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 79 to the extent that they are inconsistent with the I&I.

80. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 80 to the extent that they are inconsistent with the I&I.

81. Capital One states that the I&I speaks for itself and denies the allegations of Paragraph 81 to the extent that they are inconsistent with the I&I.

82. Capital One denies the allegations of Paragraph 82.

83. Capital One denies the allegations of Paragraph 83.

AFFIRMATIVE AND OTHER DEFENSES

Capital One asserts the following affirmative and other defenses. In asserting these defenses, Capital One does not assume the burden of proof with respect to any issue as to which applicable law places the burden of proof upon Plaintiff.

FIRST DEFENSE

Plaintiffs' Complaint, and each and every claim stated therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs failed to mitigate their damages by failing to provide Capital One with prompt written notice of the alleged breaches of representations and warranties.

THIRD DEFENSE

Plaintiffs' claims are barred by the doctrine of laches because of a failure to provide Capital One with prompt written notice of the alleged breaches of representations and warranties.

FOURTH DEFENSE

Plaintiffs prevented Capital One from performing its contractual obligations by refusing to provide Capital One with the requested information for the loans at issue.

WHEREFORE, Capital One respectfully requests judgment as follows:

1. Awarding Capital One judgment of dismissal against Plaintiffs' Complaint in its entirety with prejudice; and
2. Awarding Capital One its costs and disbursements of this action including reasonable attorney fees and such other and further relief that the Court deems just and proper.

Dated: April 11, 2014
New York, New York

James K. Goldfarb
jgoldfarb@mmlawus.com
Soren E. Packer
spacker@mmlawus.com
1185 Avenue of the Americas
New York, New York 10036
(212) 880-3961

MURPHY & MCGONIGLE, P.C.

By: /s/ Cameron S. Matheson

James A. Murphy
jmurphy@mmlawus.com
Cameron S. Matheson
cmatheson@mmlawus.com
4870 Sadler Road, Suite 301
Glen Allen, Virginia 23060
(804) 762-5320

Attorneys for Defendant Capital One, N.A.